



# Commonwealth of Massachusetts State Ethics Commission

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phone: 617-727-0060, fax: 617-723-5851



June 25, 2003

Steven Angelo  
39 Popmunet Road  
E. Falmouth, MA 02536

Re: Public Education Letter

Dear Mr. Angelo:

As you know, the State Ethics Commission has conducted an investigation into a Saugus Police traffic stop of Selectman Michael Kelleher for improper operation of his automobile on January 4, 2002. The Commission has completed that inquiry and found reasonable cause to believe that Kelleher violated the state conflict of interest law, General Laws c. 268A, § 23(b)(2) by seeking to use his selectman position to secure for himself unwarranted privileges or exemptions in relation to the stop. In addition, the Commission found reasonable cause to believe that Saugus Police Chief Edward Felix violated § 23(b)(2) by using his police chief position to intervene and provide preferential treatment to Kelleher in connection with the stop. The Commission and Kelleher and Felix have separately entered into disposition agreements by which they each agree that their conduct violated § 23(b)(2) and each pay a \$2,000 fine. You have received and read copies of those agreements.

The State Ethics Commission has also conducted a preliminary inquiry into allegations that you also violated §23(b)(2), by using your town manager position to contact the police chief to secure preferential treatment for Kelleher regarding the improper operation of his motor vehicle. Based on the staff's inquiry (discussed below), the Commission voted on March 12, 2003, that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §23(b)(2).

For the reasons discussed below, the Commission does not believe that further proceedings in your case are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with these provisions of the conflict-of-interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

## **I. Facts**

You were the Saugus town manager from July 1998 to August 2002. Michael Kelleher ("the Selectman") has been a Saugus selectman since 1999. The selectmen appoint the town manager. You and Kelleher are friends. Edward Felix ("the Chief") has been the Saugus police chief since 1996. The town manager appoints the chief.

On the evening of January 3, 2002, you, the Selectman and others socialized at a Saugus a restaurant beginning at around 9 P.M. Later in the evening, the parties went to a Saugus club where they stayed until just before midnight. At that time, you went home. The Selectman drove to another Saugus club. The Selectman drank alcoholic beverages at each of the above establishments. At approximately 1:45 A.M., the Selectman left the club and drove towards his home.

At approximately 2:00 A.M., two Saugus police officers on patrol observed the Selectman's car drift over the center line and then back to his side of the road. They pulled the car over. After being pulled over, the Selectman used his cell phone to call you to inform you that the police had stopped him.

The police officers promptly approached the Selectman's car and informed him of the reason for the stop. When the officers observed the Selectman close up, his voice was slurred, his eyes were red, and he and his vehicle smelled of alcohol. The officers suspected the Selectman was intoxicated. The officers asked the Selectman if he had been drinking, to which the Selectman responded that he drank a couple of beers. Based on their observations, the officers intended to perform a field sobriety test on the Selectman, which was standard police procedure.

According to the Selectman, he called you because he was concerned that he, the Selectman, was being or was about to be harassed by the police because he had supported you in a long-standing bitter contract negotiation with the police union.

According to you, the Selectman told you that he did not believe he had been legitimately stopped. You advised the Selectman to contact the police chief. The Selectman stated that he did not have the Chief's telephone number and asked you to call the Chief instead. You agreed, called the Chief at home and told him that the Selectman had been stopped by the police and was concerned he was being harassed. You asked the Chief to call the Selectman in his car at the scene. According to you and the Chief, all you did was ask the Chief to check into the matter. The Chief told you he would call you back to report on what happened. A short time later, the Chief telephoned you and told you that the officers drove the Selectman home. You did not question that action.

The two patrol officers and sergeant at the scene believed that the Selectman was intoxicated and, but for the Chief's intervention, a field sobriety test would have

been administered per standard operating procedure. They also believed the Selectman would have been arrested for operating a motor vehicle under the influence of alcohol ("OUI"). According to standard police procedures, the Selectman would also have been issued citations for not staying within his own lane and driving with an expired license. Citations for failing to stay within one's own lane and driving with an expired license carry \$100 and \$50 fines, respectively. The potential costs of a first-time OUI conviction include \$575 in court fines and costs, loss of license for 45 days and significant insurance surcharges.

At the time of the above stop, the selectmen were split on the question of whether to retain you as town manager. Earlier action by the selectmen made clear that Selectman Kelleher supported your retention.

## **II. Discussion**

As the town manager, you were a municipal employee as that term is defined in G.L. c. 268A, §1(g). As such, you were subject to the conflict of interest law G.L. c. 268A generally and, in particular for the purposes of this discussion, to §23 of that statute. Section 23(b)(2) prohibits any municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for anyone an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

There is reasonable cause to believe that you violated §23(b)(2) by using your town manager position to secure preferential treatment from the police for the Selectman regarding the improper operation of his vehicle, for the following reasons.

First, the preferential treatment of being driven home without taking a field sobriety test that may have led to an arrest, and, not receiving citations for driving over the center line and driving with an expired license were unwarranted privileges or exemptions for the Selectman. Police standard operating procedures would have required that the Selectman be subjected to a field sobriety test, which, in the opinions of the officers on the scene would have resulted in his arrest. The Selectman also should have been cited for not staying in his own lane and driving with an expired license. Thus, these unwarranted privileges or exemptions were not otherwise properly available to similarly situated people.

Second, these unwarranted privileges or exemptions were of substantial value. As indicated above, avoiding a field sobriety test that may have resulted in an OUI arrest was of substantial value because the likely costs were considerable, including large fines and court costs, loss of license for 45 days and significant insurance surcharges.

Finally, you used your official position as town manager to secure these unwarranted privileges or exemptions for the Selectman. By, as town manager, waking your subordinate, the Chief, at 2 A.M. and requesting that he check into the matter, you

knew or had reason to know that you were using your official position to have the Chief intervene. You also knew or had reason to know that in so calling the Chief, you were using your position to cause the Chief to give the Selectman preferential treatment. We reach this conclusion based on the totality of the circumstances, which included: (1) the Selectman provided you with no basis for his harassment concern; (2) there was no reason why this matter could not wait until the next morning; (3) you knew the Selectman had been drinking; (4) you and the Selectman were friends; (5) you needed the Selectman's vote to retain your position; (6) you knew that the Chief, who would be aware of most of these factors, would interpret your call as a request for special treatment; and (7) you knew or should have known when the Chief called you back and informed you that the police had driven the Selectman home, that the Selectman had received special treatment yet you did nothing about it.

In your defense, you argue that you were merely passing on a citizen's concern about possible police misconduct to the most responsible person – the police department chief and state that you did not explicitly invoke your official position. In the Commission's view, however, under the totality of the circumstances you knew or had reason to know that you, as town manager, were in effect asking the Chief for preferential treatment for the Selectman and, according to the Chief, is how he understood your request. While you made a judgment based on a middle-of-the-night telephone call from a friend claiming harassment, you did not conduct or request the Chief to conduct an independent inquiry or follow-up with the Chief once you learned that the Selectman had been driven home. Furthermore, there was no evidence of police misconduct and the action the police officers' proposed was entirely consistent with Police standard operating procedure and the law. Ultimately, the Selectman, rather than being the victim of harassment by the police, was in fact the recipient of preferential treatment from them.

Therefore, by knowingly or with reason to know using your position as town manager to secure for the Selectman these unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals, there is reasonable cause you violated §23(b)(2).

### **III. Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with a education letter rather than imposing a fine because it believes the public interest would best be served by doing so. Public officials should understand that they do not need to explicitly invoke their positions in order to get their subordinate's attention. The purpose of this public education letter is to emphasize that point. Therefore, when a public official as in this case asks a subordinate to intervene in a matter involving another, especially another public official, he must be careful not to send, even implicitly, a message that preferential treatment is being sought.

Based upon its review of this matter, the Commission has determined that your receipt of this public education letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.